came back to the car and drove it home. He noticed nothing unusual about the car nor did he smell any unusual odour in or around the car. The car was in his possession on that day until evening when he lent it to Appellant No. (2).

Thus our analysis of the evidence leads us to an irresistable conclusion that the opium must have been placed in the car during the two day period when it was in the custody of Appellant No. (2). We cannot accept counsel's submission that the opium in question could have already been in the car when it was lent to Appellant No. (2). The fact that the car came under Customs surveillance is neither here nor there. This could not be an evidence to show that the opium in question was already in it. Further having regard to the quantity of opium found and the place where it was hidden in the car we think that whoever did the job must have expended a good deal of effort and time to conceal the opium there. The concealment could not be done momentarily nor hurriedly but in a longer period of time allowing for a proper planning and timing. Only a person who had a longer time to use the car could have the opportunity to execute this clever job.

Apart from the fact that Appellant No. (2) had possession and control of the car during the relevant period, i.e. between the evening of August 13 and forenoon of August 15, 1977 and the fact that he had opportunity to conceal the opium in the car during the period, there are two other circumstances which go to show that Appellant No. (2) had the necessary knowledge. We recall that he told PW4 that the purpose of borrowing the car was to go to Trengganu. This was a deliberate lie as he never intended to go to Trengganu at all but to Singapore, which he did. We also recall that he told PW4 that he needed the car for two days. And as such there was no reason at all for him to see PW4 again in the evening of August 14 for permission to use it further on August 15. Such permission was already given to him. In other jurisdictions a false statement made by an accused person concerning the surrounding circumstances in which an offence was committed whilst he had an opportunity to commit the offence can be regarded as a corroboration of the evidence against him. *Eade* v. *The King*[4] and also *Regina* v. *Lucas (Ruth)*.[5] We accept the decisions in these cases to be good law. In this case we hold that the representation he made to PW4 regarding the purpose of borrowing the car was a deliberate lie and is therefore a corroborative evidence against him for which he must explain. Such lie is a reflection of his consciousness of guilt as regards the use he intended to make of the car in question.

The other material circumstance is the purchase of chempedak fruits which the Customs officers found to have emitted very strong odour. The chempedak fruits were purchased by Appellant No. (2), whilst the rambutans and some sweet potatoes were bought by Appellant No. (1). All these were bought at Ayer Hitam and they were all intended as gifts to their sister who lives in Singapore. The learned judge in the court below took judicial notice of the fact that raw opium emitted out very strong disagreeable smell and thus drew an inference that the chempedaks were in reality intended by Appellant No. (2) to camouflage the odour of the opium. For ourselves having regard to the common course of natural events and human conduct we cannot find fault with such inference. Thus the purchase of the chempedaks was in reality for a different purpose, although outwardly it appeared to be innocent as it was professedly intended as a gift to his sister in Singapore and only Appellant No. (2) knew what that different purpose was.

In conclusion the totality of these circumstances — i.e. the custody and control of the car, the opportunity of Appellant No. (2) who had custody and control of it during the material period to conceal the raw opium in question in the car, the lies which he told to PW4 about the purpose of borrowing the car for that period and lastly the purpose which could be drawn from the purchase of the chempedaks with such a strong odour — all these circumstances lead us to an irresistible conclusion that Appellant No. (2) knew that the raw opium in question was concealed in the car and so possession was proved against him. Nothing said by him in his defence could alter this conclusion. We therefore hold that his conviction and sentence should be maintained.

As regards Appellant No. (1), there is no evidence against him other than that he was a mere driver. He did not borrow the car. He did not invite Appellant No. (2) to come and spend the night in his house on August 14. It was not his idea that they all went to Singapore on August 14 and 15. He and his family joined Appellant No. (2) on the two trips to Singapore because he was required to drive the car as he had a valid driving licence, whereas Appellant No. (2), though knowing how to drive and capable of driving it had no valid driving licence because he had lost it and had not asked for the replacement. Thus in the circumstances of the case we are of the view that the conviction and sentence of Appellant No. (1) are not supported by evidence and should therefore be quashed.

Finally we allow the appeal of Appellant No. (1) and order that his conviction and sentence be quashed, but we dismiss the appeal of Appellant No. (2) and order that his sentence and conviction do stand.

Order accordingly.

Solicitors: *R.K. Menon & Co.*

PUBLIC PROSECUTOR v. CHU BEOW HIN

[F.C. (Raja Azlan Shah Ag. L.P., Salleh Abas & Abdul Hamid F.JJ.) September 22 & October 14, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 32 of 1977]

Criminal Law and Procedure — Forfeiture — Offences under Price Control Act, 1946 — Failure to affix tags on cloths — Goods seized — Whether order for forfeiture of goods can be made — Price Control Act, 1946, ss. 14 & 22(1).

Price Control — Failure to affix tag — Effect of.

In this case the respondent had pleaded guilty to a charge under section 22(1) of the Price Control Act, 1946 for failing to affix tags on his goods, that is clothes. He was fined $5,000 and the learned President ordered the goods seized to

be forfeied. On appeal the learned Judge of the High Court held that the court had no power to order forfeiture and he ordered that the goods be returned — see [1981] 2 M.L.J. 85. The Public Prosecutor applied for the point of law to be referred to the Federal Court, namely, whether the court has a discretion to order forfeiture of goods seized under the Price Control Act, 1946.

Held: (1) the enacting words of section 14(2)(b) of the Price Control Act are clear and direct and the court must give effect to the clear and explicit language of the enacting words of the subsection;

(2) the subsection provided for a forfeiture as an added penalty and the court clearly has a discretion to order forfeiture;

(3) the Price Control Act, 1946 deals with a special case and to that extent the general provisions of the Criminal Procedure Code do not affect its operation.

Cases referred to:-

(1) *In re a Debtor* [1948] 2 All E.R. 533.

(2) *Attorney-General* v. *H.R.H. Prince Ernest of Hanover* [1957] 1 All E.R. 49, 55.

FEDERAL COURT.

Lamin bin Haji Yunus (Deputy Public Prosecutor) for the appellant.

Anthony Gomez for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (delivering the judgment of the Court): The reference before us is whether the court has a discretion to order forfeiture of goods seized by any of the officers named in section 14(1)(a) of the Price Control Act, 1946 (Revised 1973). The relevant provision of the said Act is section 14:

"(2) Where any price-controlled goods have been seized under subsection (1)(a), then —

(a) if, within thirty days of the seizure, no proceedings are instituted against any person for an offence alleged to have been committed in relation to those goods, the goods and accompanying appliances shall be restored to the person from whom they were seized if he can be found and, if not, shall be disposed of as may be directed by a Magistrate; or

(b) if, within thirty days of the seizure, proceedings are instituted against any person, the goods and accompanying appliances may be forfeited or otherwise disposed of in such manner as the court may direct:"

The respondent pleaded guilty to a charge under section 22(1) of the Price Control Act, 1946 (Revised 1973) for failing to affix tags on his goods i.e. $20,000 worth of textiles. He was fined $5,000 and the goods seized were forfeited under section 14(2)(b) of the said Act. The learned President was of the view that he had a judicial discretion to forfeit the goods under the said subsection.

On appeal the learned judge held that the court had no discretionary power to order forfeiture. He noted that there is no separate provision for forfeiture or confiscation in the Price Control Act, section 22 of which is silent in this respect. He contrasted the said Act with section 26(1) of the Control of Supplies Act, 1961 (Revised 1973), section 14(1) of the Fisheries Act, 1963, section 92(4) of the Road Traffic Ordinance, section 126 of the Customs Act, 1967, section 30(2) of the Dangerous Drugs Ordinance, 1952, section 426C(1) of the National Land Code and section 74(1) of the Animals Ordinance, 1953 in which he said there are special provisions for forfeiture and held that in the absence of any such express provision in the Price Control Act, the court has no power to order forfeiture. He further said that the provision of the said Act regarding forfeiture is vague and he accordingly construed that in favour of the appellant. He referred to section 407 of the Criminal Procedure Code which enacts that 'the court's power to order forfeiture is subject to any special provisions relating to forfeiture contained in the written law under which the conviction was had' and said that since the provisions of the Price Control Act are silent with regard to forfeiture except section 14(2)(b) which merely makes 'an oblique reference and not being comprehensive,' section 407 of the Criminal Procedure Code should be relied on by the court in the disposal of the goods, the subject-matter of the present appeal.

We were told that the goods had since been returned to the respondent.

The first task of the court is to find out the intention of Parliament and the words of a statute speak the intention of Parliament. 'And in so doing it must bear in mind that its function is *jus dicere*, not *jus dare*: the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament' (*Maxwell* on Interpretation of Statutes, 12th Ed. pp. 1, 2).

The Price Control Act was passed with the purpose of controlling the price of goods. It has discernible public policy for its object. It is unique in this respect and therefore the scope of its operation is clear. In order to discover the intention of Parliament it is therefore proper that the court should read the Act as a whole, inform itself of the legal context of the said Act, including Acts *in pari materia* which may throw some light on its meaning, and of the factual context, such as the mischief to be remedied.

In order to ascertain the intention of Parliament, the learned judge has referred to phrases which have been used in other statutes which have fundamentally the same social objectives. In our opinion, that is a safe guide as an extrinsic aid to the construction of a statute, but in the last resort, we think that these statutes turn upon the provisions of the legislation in question and are therefore of relatively little assistance.

The decision of the learned judge rested on the basis that there is no express provision regarding forfeiture. That seems to us to involve implying something wholly inconsistent with the words expressly used in section 14(2)(b). His reasoning really amounts to performing a surgical operation on the enacting words of the subsection by restricting its meaning. 'If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used.' (See *In re a Debtor*[1]). In our opinion, what should be a fundamentally simple case has been confused and obscured beyond all proportion.

We take the view that the enacting words of section 14(2)(b) are not only very clear, but they are also direct. 'If proceedings are instituted within thirty days of the seizure of goods by any of the officers

named in section 14(1) of the Act, the court may, *inter alia,* forfeit or otherwise dispose them in such manner as it may direct'. What could be plainer than that? In such a case the court must give effect to the clear and explicit language of the enacting words of the subsection. It cannot disregard them unless it is apparent that some other meaning is intended. Of course, 'it must often be difficult to say that any terms [of a statute] are clear and unambiguous until they have been studied in their context'. (See *Attorney-General* v. *H.R.H. Prince Ernest of Hanover*[2]).

In the face of the abundantly clear words of section 14(2)(b) we find it hard to imagine any context, or any circumstances, which should persuade us to perform the surgical operation already mentioned. We cannot find anything in the said Act which leads us to the conclusion that the enacting words of section 14(2)(b) are not intended to have their ordinary and natural meaning. Nothing but the most compelling context would justify a construction radically altering the plain meaning of the enacting words in the section.

Forfeiture clauses are common in penal statutes. They can of course take many forms. We reiterate that there are cogent reasons of policy why the Price Control Act was passed. It provides for a forfeiture provision as an added penalty because we think that Parliament must have intended that a limited penalty without the forfeiture clause may prove illusory to remedy the mischief.

Lastly, we need to say something on the provision of section 407 of the Criminal Procedure Code. The learned judge seems to think it applies in the present case because there is no express provision in the said Act regarding forfeiture. Section 407 enacts that the court's power to order forfeiture is "subject to any special provisions relating to forfeiture contained in the written law under which the conviction was had." That in our opinion is a general provision. The Price Control Ordinance, 1946, the precursor to the Price Control Act was passed subsequently and brought into effect on October 1, 1946. It is a special enactment, and in passing it the legislature had its intention directed to the special case which the statute was meant to meet, and considered and provided for all the circumstances of the special case. Where a special provision is made in a special statute that special provision excludes the operation of a general provision in the general law — *generalibus specialia derogant.* Therefore the Price Control Act deals with a special case and to that extent the general provisions of the Criminal Procedure Code do not affect its operation.

We therefore answer the question referred in the affirmative.

Order accordingly.

Solicitors: *A. Gomez & Co.*

TIO CHEE HING v. CHUNG KHIAW BANK LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Seah J.) May 15 & October 15, 1981]

[Kota Kinabalu — Federal Court Civil Appeal No. 167 of 1979]

Practice and Procedure — Application for leave to appeal to Yang di-Pertuan Agong — Leave to levy execution as judgments entered more than six years ago — Interlocutory order — Whether order fit one for appeal — R.S.C., 1957, O. 42 r. 23 — Courts of Judicature Act, 1964, s. 74(1)(b).

The respondents had obtained leave to issue execution against the applicants on two judgments obtained more than six years ago. The Federal Court dismissed the appeal against the decision of the High Court, holding that the learned trial judge had exercised his discretion properly ([1981] 1 M.L.J. 227). The applicant applied for leave to appeal to the Yang di-Pertuan Agong.

Held: the order by the learned trial judge was not a final order but should be regarded for all intents and purposes as an interlocutory order. In order to obtain leave to appeal, the applicant must show that the order was a fit one for appeal and as he has failed to do so, the application must be dismissed.

Cases referred to:-

(1) *Lopez* v. *Valliappa Chettiar* [1968] 1 M.L.J. 224.

(2) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547, 548.

(3) *W.T. Lamb & Sons* v. *Rider, Same and Same* [1948] 2 All E.R. 402.

FEDERAL COURT.

R.R. Sethu for the appellant.

Alex Khoo for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): On September 8, 1980 this court dismissed an appeal by the present applicants from the order of the High Court of Borneo sitting at Sandakan dated August 6, 1979, giving leave to the respondents/plaintiffs to execute the judgments they had obtained in Kota Kinabalu High Court Civil Suit Nos. 181 and 182 of 1969.

This is an application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the whole of the decision, and for stay of execution of the orders and/or judgments in the aforementioned civil suits.

Judgment had been entered against the appellant in both Civil Suits (Civil Suit Nos. 181 and 182 of 1969) on April 6, 1970. In each case appellant had failed to enter appearance and judgment was entered in default of appearance. The former action was in respect of a charge to secure the repayment of a considerable sum of money advanced to a "Company" of which the appellant was the sole proprietor. The latter was for repayment of the overdraft granted to the appellant.

The respondents had then applied successfully to the High Court under Order 42 rule 23 of the Rules of the High Court, 1957 for leave to issue execution against the appellant on the two judgments entered more than 6 years ago.

An appeal by the present applicant against the order granting leave was dismissed by this court on